vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3782 OF 2007

Mumbai Mazdoor Sabha ... Petitioner

V/s.

M/s.Vidyut Metallics Pvt. Ltd. ... Respondent

Mr.S.K. Talsania i/b Gautam Yadav for Petitioner
Mr.R.S. Pai with Ms.S.Deshpande for Respondent No.1
Mr.S.M. Oka for Respondent Nos.2 to 4

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 31, 2007**

P.C.:

. The petitioner challenges the order passed below Exhibits C3, U21 and U27. By the order passed below Exhibit C3, the Industrial Court has directed the respondent company to deposit the contribution amount with the complainant union. The complainant union i.e., the petitioner herein, was directed to disburse the amount to the concerned employees and/or their legal representatives without any compulsory deductions within 7 days of the receipt of the amount.

2. The main contention of the petitioner is that clause 25 of the settlement dated 30.1.1992 permits the union to deduct a levy from the amounts payable to retiring employees or to the heirs of employers who die while in service. It is submitted that the entire

amount i.e., the company's contributions and the workers' contributions, mentioned in clause 25 was to be deposited with the Sabha i.e., the Petitioner by the Company and it is for the Sabha to distribute the amount to the legal representatives in such manner as it deems appropriate. The petitioner contends that a practice for years together to deduct 15% out of this amount deposited with them, as levy. It is therefore, submitted that the Industrial Court was in error in directing the petitioner union to pay the entire amount, without deductions, to the employees. It is submitted on behalf of the petitioners that the judgment of the Supreme Court in the case of **Balmer Lawrie Workers Union & Anr. v/s. Balmer Lawrie & Co. Ltd. & Ors., 1985 I CLR 103** permits the Sabha to collect a levy and the 15% demanded by the Sabha as per the earlier practice ought to be paid to the Sabha. The Industrial Court ought not to have directed full payment of the contributions to the legal heirs.

2. A perusal of clause 25 prima facie indicates that it is applicable only when the Sabha is to distribute the amount to the legal heirs in such manner as the Sabha considers it appropriate. There is no mention about this amount being retained by the Sabha in the case of employees who are retiring. Apart from this, there is no mention in the settlement which is

relied on as to whether this 15% can be deducted. In fact, clause 41 speaks about a levy to be imposed i.e., 5% towards General Fund of the Sabha.

3. In my opinion, the order of the Industrial Court cannot be faulted. The Sabha, prima facie, cannot deduct any amount on account of this clause 25 which they rely on. Prima facie, it appears that the Sabha is only a nominee for collection of the amount on behalf of the legal representatives. In any case, the settlement does not speak about the amount being retained or distributed in "such manner as the Sabha deems fit" in case of retiring employees. Thus, there is no error in the order of the Industrial Court.

4. The learned Counsel appearing for the Sabha states that the deductions have already been made by the Sabha after the order of 7.4.2002. These amounts shall be deposited by the Sabha with the Industrial Court within two weeks from today.

5. Petition rejected.